DATUK AMAR JAMES WONG KIM MIN & ANOR A

v.

PENDAFTAR PERTUBUHAN

HIGH COURT MALAYA, KUALA LUMPUR B
RAUS SHARIF J
[JUDICIAL REVIEW APPLICATION NO: R1-25-137-2002]
15 SEPTEMBER 2006

ADMINISTRATIVE LAW: *Remedies - Certiorari - Exercise of administrative powers - De-registration of society - Whether decision of Registrar of Societies vitiated by procedural unfairness - Doctrine of substantive unfairness - Whether a valid ground for judicial review - Societies Act 1966, ss. 13(1), (2), 16(1)* C

This was an application by the second applicant, the Secretary General of Parti Kebangsaan Sarawak ('SNAP'), for an order of *certiorari* to quash the decision of the Registrar of Societies ('ROS') de-registering the said political party under s. 13(1)(c)(ix) of the Societies Act 1966 ('the Act'). It was not disputed that the de-registration was made following a leadership crisis in SNAP, and made after notices under s. 16(1) and s. 13(2) respectively of the Act had been issued. That notwithstanding, the applicant alleged that the ROS had been guilty of procedural and substantive unfairness, in that he had not given a reasoned decision (and therefore the right to be heard), had failed to make a full disclosure of his considerations and had taken into consideration irrelevant considerations before arriving at the decision. The ROS denied the allegations and in any case retorted that 'substantive unfairness' could not be a ground to challenge an administrative decision. It was further argued that on the facts the decision was proper and justified and ought to be sustained by the court. D E F G

Held (dismissing the application):

(1) The issue of non-disclosure is no longer an issue. This court has dealt with this issue in the earlier applicant's application for discovery where the court accepted the respondent's averment that all documents pertaining to his decision making process were before the court. (para 18) H

(2) The scheme of ss. 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is "to form an opinion that a dispute had occurred or that the ROS was I

not satisfied of the identity of the persons who have been properly appointed as office bearers". To subscribe to the applicant's submission would tantamount to adding words to the sections which this court must always guard against. (para 19)

(3) The decision in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Anor Appeal* clearly supported the submission of the ROS that "substantive fairness" cannot be a ground to challenge an administrative action. This court is thus in no position to disagree with the said Federal Court decision. Further, the issues of disproportionate decision, irrelevant consideration, excess of jurisdiction raised by the applicant under this heading are all devoid of merit. (paras 23 & 24)

(4) It was beyond doubt that a dispute did exist within SNAP. Accordingly, the ROS was right to issue the notice under s. 16(1) and subsequently under s. 13(2) of the Act. And, as the ROS was not furnished with the evidence of settlement of the dispute, the ROS was right to cancel the registration of SNAP. (para 27)

Case(s) referred to:

Datuk Amar James Wong Kim Hin & Anor v. Pendaftar Pertubuhan [2004] 6 MLJ ***(refd)***

Ghazi Mohd Sawi v. Mohd Hanif Omar & Anor [1994] 2 CLJ 333 SC ***(refd)***

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Anor Appeal [2002] 4 CLJ 105 FC ***(refd)***

PV Das v. Pendaftar Pertubuhan Malaysia [2000] 2 CLJ 26 HC ***(refd)***

Rohana Ariffin & Anor v. Universiti Sains Malaysia [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 HC ***(refd)***

Surinder Singh Kanda v. Government of the Federation of Malaya [1962] MLJ 169 ***(refd)***

Legislation referred to:

Societies Act 1966, ss. 16(1), 13(1)(c)(ix), (2), 16(1)

For the applicant - Khoo Guan Huat (TH Foo with him); M/s Skrine & Co
For the respondent - Azizah Hj Nawawi; SFC

Reported by Rose Aziz

JUDGMENT

Raus Sharif J:

[1] This is an application by the applicants for the following relief:

(a) an order of *certiorari* to quash the decision of the Registrar of Societies ("ROS") dated 5 November 2002, in cancelling the registration of Parti Kebangsaan Sarawak ("SNAP");

(b) a declaration that the decision of the ROS dated 5 November 2002, in cancelling the registration of SNAP is void and of no effect;

(c) an order that damages be assessed;

(d) costs to be paid to the applicants; and

(e) such further or other relief as the court deem fit.

[2] The applicants were, at the material time, the duly elected President and Secretary-General of SNAP respectively. SNAP was registered as a political society under the Societies Act 1966 ("the Act") on 10 April 1961. Since then SNAP had been actively involved in the Malaysian political scene, particularly in the State of Sarawak.

[3] Sometime in 2002, a leadership crisis had occurred in SNAP between two groups. One group was led by the president, Dato' Amar James Wong, whilst the other group was led by the deputy president, Dato' Sri Peter Tinggom.

[4] The trouble surfaced when the deputy president, in the absent of the president, convened the Central Executive Council ("CEC") of the party on 29 May 2002. At the meeting, five additional CEC members were appointed and *inter alia* resolved that a National Council Meeting needed to be convened and had accordingly fixed 9 June 2002 as the date for the meeting.

[5] However, the National Council Meeting scheduled on 9 June 2002 was aborted due to the injunction taken out by the president. The president had on 7 June 2002, two days before the National Council Meeting, called and presided a CEC meeting comprising of members aligned to him. In the meeting, they condemned the CEC meeting that was called and presided by the deputy president and declared that the meeting presided by the deputy president was illegal.

[6] On 22 June 2002, the president suspended the deputy president's membership in SNAP. The suspension was confirmed by the CEC meeting aligned to the president on 27 June 2002.

[7] Meanwhile, the injunction taken by the president was set-aside on 9 June 2002. With the injunction being set aside, the National Council Meeting as proposed by the group aligned to the deputy president was held on 23 June 2002. At the National Council Meeting, the duties of the president, vice president, secretary general, deputy and assistant secretary general were suspended. The deputy president assumed the post and duties as Acting President.

[8] With above development brewing in SNAP, the ROS, on 2 July 2002 issued a notice under s. 16(1) of the Act. In the notice the ROS informed SNAP that he was of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he is not satisfied of the identity of the persons who have been properly constituted as the office bearers of SNAP. Hence, SNAP was asked to produce evidence of a settlement of any such dispute and of a proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the settlement of such dispute.

[9] On 19 July 2002, the secretary general of SNAP ie, the second applicant, responded to the ROS's notice, stating that the president's group were the lawful office bearers of SNAP and claimed that the actions taken by the group led by the deputy president were illegal and *ultra vires* the party's constitution.

[10] The ROS had also received a reply from the group led by the deputy president. In the letter dated 26 July 2002, the deputy president's group defended the legitimacy of their CEC meeting as well as the National Council Meeting held on 23 June 2002 and the decisions taken at the said meetings.

[11] The ROS, by a letter dated 13 September 2002, issued another notice and this time under s. 13(2) of the Act, requiring SNAP to produce evidence of settlement of the disputes and of the proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the settlement of the disputes.

[12] The president's group replied to the notice in a letter dated 22 September 2002. They reiterated their contention that they were the lawful office bearers of SNAP and the action taken by group led by the deputy president was illegal and *ultra vires* the party's constitution. Further in a letter dated 25 September 2002 the president's group presented a legal argument that the CEC which was called by the deputy president in the absence of the president was both illegal and unconstitutional.

[13] The deputy president's group also responded to the ROS notice under s. 13(2) of the Act. In the letter dated 4 October 2002 the deputy president's group stated that they were the lawful office bearers of SNAP and pointed out that the acts done by the president were illegal and unconstitutional.

[14] On 5 November 2002, the ROS issued his decision to cancel the registration of SNAP under s. 13(1)(c)(ix) of the Act. Hence this application by the applicants. However, on 28 November 2005, the first applicant withdrew himself as a party to the application. Thus, the application was proceeded with only by the second applicant ("applicant").

[15] Before me, the applicant relied on two main grounds to quash the decision of the ROS, namely:

(i) Procedural Unfairness.

(ii) Substantive Unfairness.

Procedural Unfairness

[16] The grounds relied by the applicant under this heading are on the issues of non disclosure of materials and the denial of reasoned decision. According to the applicant, the ROS in arriving at his decision to de-register SNAP, had considered documents not available or known to the applicant. It is the contention of the applicant that the ROS had:

(a) relied on some written representations made by the deputy president's group who were then in but had since left SNAP; and

(b) discussions with the deputy president's group and/or other officers in the Ministry of Home Affairs before making the said decision.

[17] Hence, it is the contention of the applicant that the non-disclosure of the documents amounted to grave deprivation of his right to be heard and therefore rendering the decision vitiated. According to him procedural fairness dictates that all materials which are being relied upon by a public authority for giving its decision against a person should be brought to his attention and be given an opportunity to deal with. The applicant cited two well known cases of *Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] MLJ 169, and *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia* [1989] 1 MLJ 487 to support his argument.

[18] With respect, the issue of non-disclosure is no longer an issue. I have dealt with this issue in the applicants' earlier application for discovery, where I had accepted the ROS averment that all documents pertaining to his decision making process were before the court. (See *Datuk Amar James Wong Kim Hin & Anor v. Pendaftar Pertubuhan* [2004] 6 MLJ). Hence, the allegation of non-disclosure of documents by the applicant remain a mere allegation.

[19] Further, I am of the view that the scheme of s. 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is to "to form an opinion that a dispute had occurred or that the ROS was not satisfied of the identity of the persons who have been properly appointed as office bearers". To subscribe to the applicant's submission would tantamount to adding words to the sections which this court must always "guard itself against adding words which were never intended by Parliament". (See *Ghazi bin Mohd Sawi v. Mohd Hanif bin Omar & Anor* [1994] 2 CLJ 333 SC).

[20] Under this heading of procedural unfairness, it is also the contention of the applicant that he had been denied of reasoned decision. To the applicant, procedural fairness imposes a duty on public decision makers to give reason for their decisions. As the ROS, in this case, had not given his reasons in cancelling SNAP, the applicant had been deprived of his right to know the basis upon which his fate was deliberated. Such decision, is therefore, according to the applicant, liable to be struck down.

[21] With respect, I am unable to agree with the applicant. Firstly, it is an established position of the law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, ss. 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant.

Substantive Unfairness

[22] The issues raised by the applicant under this heading are:

(i) disproportionate decision;

(ii) irrelevant consideration;

(iii) excess of jurisdiction; and

(iv) acting inconsistently.

[23] The ROS submitted that "substantive fairness" cannot be a ground to challenge an administrative decision. The case of *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Anor Appeal* [2002] 4 CLJ 105 FC, was cited to support the argument, where Mohamed Dzaiddin 'FCJ' (as he then was) said:

> We pause to note here that the Court of Appeal seems to introduce the doctrine of substantive fairness as a separate ground in its review of the administrative decision of the State Authority under the Act by invoking art. 8(1) read together with art 5(1) of the Federal Constitution. The Court also relied on R. Rama Chandran.

> In our view, Parliament having excluded judicial review under the Act, it is not permissible for our courts to intervene and disturb a statutorily unreviewable decision on the basis of a new amorphous and wide ranging concept of substantive unfairness as a separate ground of judicial review which even the English courts in common law have not recognised.

[24] The above authority, clearly support ROS's position and I am in no position to disagree with the Federal Court's decision.

[25] Further, I am of the view that the issues raised by the applicant under this heading is devoid of any merit. The first issue raised by the applicant was that the decision of the ROS to de-register SNAP was disproportionate and too severe a measure to be taken against a society as established as SNAP. My short answer is that, it is not the duty of this court to substitute its own view as to what is the appropriate or lesser measure ought to be taken by the ROS.

[26] The second and third issues raised by the applicant under this heading is that the ROS had taken irrelevant considerations in arriving to an opinion that a dispute had risen in SNAP and hence had acted in excess of jurisdiction in de-registering SNAP. With respect I am unable to hold as such. The affidavit of the first applicant in support of this application, clearly shows the existence of a 'dispute' between the group led by the president and the other group led by the deputy president. The first applicant in his letter to the ROS confirmed the dispute when he stated that in the absence of the president, another team led by the deputy president had tried to 'usurp the leadership' by unconstitutional acts such as to convene CEC meeting, National Council Meeting and the EGM. In another exhibit ie, a letter from the other group clearly shows that a parallel CEC led by the deputy president held a National Council Meeting on 23 June 2002 and had passed several resolutions including the appointment of the deputy president assuming the post and duties as acting president and suspending the duties of the president and several others.

[27] To me, on the facts of this case is beyond doubt that a dispute does exist within SNAP. Accordingly, the ROS was right to issue the notice under s. 16(1) and subsequently under 13(2) of the Act. As the ROS was not furnished with the evidence of settlement of the dispute or institution of proceedings for settlement of the dispute, the ROS was right to cancel the registration of SNAP. To me, what the ROS did was merely complying with the statutory provisions of the Act.

A **[28]** The final issue raised by the applicant under this heading is that the ROS had acted inconsistently from his previous practice. Reference was made to the case of *PV Das v. Pendaftar Pertubuhan Malaysia* [2000] 2 CLJ 26 HC, whereby the ROS did not issue the notice under s. 16 of the Act or cancel the registration of the People Progressive B Party, although the party was fragmented into three factions, one faction was led by Dato' Mak Hon Kam, another by Dato' Kaveas and other by PV Das. On this issue, one can only speculate, as the applicant had never raised this issue in his application or in the supporting affidavit to enable the ROS to throw some light on the issue. As such, there is no C evidence before this court as to whether the facts are completely the same so as to insinuate that the ROS had acted inconsistently.

[29] For the above reasons, I am of the view that there is no merit in the application. Accordingly the application is dismissed with costs.

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